

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MATTHEW JOHNSON, §
Petitioner, §
v. § Civil Action No. 3:19-cv-02310-E
BOBBY LUMPKIN, §
Director, Texas Department §
of Criminal Justice, §
Correctional Institutions Division, §
Respondent. § *DEATH PENALTY CASE*

**RESPONDENT'S SECOND REQUEST FOR AN
EXTENSION OF TIME TO RESPOND TO
PETITIONER'S FEDERAL HABEAS PETITION**

This is a federal habeas corpus case brought by Petitioner Matthew Johnson pursuant to 28 U.S.C. §§ 2241 and 2254. Johnson filed his federal habeas petition on September 11, 2020. ECF No. 21. Pursuant to this Court's order, the Director's response is currently due on February 8, 2021. ECF No. 26. The Director now respectfully requests additional time to file his responsive pleading.

The undersigned has reviewed Johnson's petition, but has been unable to devote sufficient time to researching and responding to each of his claims. As an initial matter, this is a capital federal habeas proceeding with a voluminous state court record. Further, since the Director's first extension request was granted, the undersigned has been working on a response to an

extensive state habeas application in the capital case of *Ex parte Falk*, WR-18,081-04 (Tex. Crim. App.), that has a statutory deadline of March 2, 2021. The application consists of over five hundred pages of briefing with multiple claims and sub claims. Additionally, the undersigned is working on a motion to recuse in the capital case *Rubio v. Director*, No. 1:18-CV-88 (S.D. Texas). Due to these obligations, the undersigned respectfully requests a 60-day extension.

The Director assures the Court that this motion is not filed to delay these proceedings, but to ensure that all of Johnson's claims are properly addressed. Counsel for Johnson are not opposed to this motion. However, Johnson's counsels' non-opposition to the Director's request does not imply that Johnson's counsel do not object to this Court's decision denying their motion to extend the date for filing an amended petition until some date after it is safe for them to conduct the investigation necessary to comply with their obligation under federal law and fully protect Johnson's statutory and constitutional rights. *See* ECF nos. 22 and 23.

For the foregoing reasons, the Director respectfully requests an extension of 60 days, up to and including Friday, April 9, 2021, to file his answer to Johnson's petition.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JOSH RENO
Deputy Attorney General
for Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

s/ Garrett Greene
GARRETT GREENE
Assistant Attorney General
Counsel of Record
State Bar No. 24096217

Post Office Box 12548, Capitol Station
Austin, Texas 78711
Tel: (512) 936-2144
garrett.greene@oag.texas.gov

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

I certify that I conferred with Johnson's counsel, David R. Dow, about this motion and he stated that he was unopposed to this motion.

s/ Garrett Greene
GARRETT GREENE
Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that on February 3, 2021, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a "Notice of Electronic Filing" (NEF) to the following counsel of record, who consented in writing to accept the NEF as service of this document by electronic means:

Jeffrey Robert Newberry
UNIVERSITY OF HOUSTON LAW CENTER
4604 Calhoun Road
Houston, TX 77204-6060
jrnewber@central.uh.edu

David R Dow
UNIVERSITY OF HOUSTON LAW CENTER
4604 Calhoun Road
Houston, TX 77204-6060
ddow@central.uh.edu

s/ Garrett Greene
GARRETT GREENE
Assistant Attorney General